THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.2362 of 2006

Between:

Ommi Sanyasi Rao.

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PETITIONERS

and

The Commissioner of Police, Visakhapatnam and others.

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RESPONDENTS

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ORDER:

Heard the learned counsel for the petitioner, the learned Government Pleader for Home appearing on behalf of respondents 1 to 3 and Sri B.Adinarayana Rao, the learned counsel appearing on behalf of respondents 4 and 6 to 10.

The petitioner seeks a Writ of Mandamus to direct respondents 1 to 3 to act in accordance with law and provide adequate police protection to the petitioner for effective enforcement of the order passed in E.A.No.1279 of 2002 in E.P.No.38 of 1968 in O.S.No.72 of 1959 and take steps that the petitioner-decree holder is delivered vacant possession of the suit schedule property.

It is stated that the father of the petitioner filed O.S.No.72 of 1959 on the file of IV Additional District Munsiff, Visakhapatnam, for possession and eviction of the sole defendant therein, namely, late Muvvala Chinnaiah, and the said suit was decred on 23-04-1962, which was confirmed in the First Appeal in A.S.No.98 of 1962 and also in the Second Appeal in S.A.No.194 of 1963. Thereafter, the father of the petitioner filed E.P.No.38 of 1968 for possession of the suit schedule property. As there was resistance and obstruction for execution of the decree, the decree could not be executed and there was a delay in execution of the decree and after all the objections and obstructions were cleared, warrant of delivery of possession was issued by the executing court on 02-08-1994, but still there was an obstruction caused in executing the said decree and, therefore, the petitioner and his brothers filed E.A.No.1279 of 2002 to direct the Commissioner of Police, Visakhapatnam, to provide necessary police aid for effective delivery of vacant possession of the suit schedule property. Accordingly, the said E.A.No.1279 of 2002 was allowed on 03-08-2002.

The order in E.A.No.1279 of 2002 in E.P.No.38 of 1968 in

O.S.No.72 of 1959 on the file of IV Additional District Munsif, Visakapatnam, dated 03-08-2002, goes to show that the Commissioner of Police, Visakhapatnam, was directed to render police aid to the decree holders and the Court Officer is entrusted with the execution of warrant of delivery in E.P.No.38 of 1968 for delivering vacant possession of the suit schedule property to the decree holders by exercising powers to remove any obstruction from any person or to remove any structure existing in the suit schedule property and to arrest any person causing obstruction to deliver vacant possession of the property to the decree holders.

It is further stated that the unofficial respondents questioned the said order claiming right through judgment and decree by filing C.R.P.No.4524 of 2002, which was initially allowed but on a review petition filed by the petitioner herein, the order passed in C.R.P.No.4524 of 2002 was set aside and, therefore, the order passed in E.A.No.1279 of 2002 was confirmed.

It is further stated that the petitioner filed a representation before the Commissioner of Police, Visakhapatnam, on 10-10-2005, seeking necessary police aid for implementation of the order passed in E.A.No.1279 of 2002 in E.P.No.38 of 1968, dated 03-08-2002.

The 1st respondent filed counter affidavit on behalf of respondents 1 to 3 stating that pursuant to the order in E.A.No.1279 of 2002 in E.P.No.38 of 1968, a letter was addressed by the I Additional Junior Civil Judge, Visakhapatnam, on 05-08-2002 to the Commissioner of Police, Visakhapatnam, for delivering vacant possession of the decretal property to the decree holder. Pursuant to the said order, the police protection was given to the Bailiff/Amin for executing the order in the said E.P. Accordingly, the said Bailiff/Amin executed the order from 07-08-2002 to 12-08-2002 and handed over vacant possession of the decretal property.

After handing over possession of the decretal property, a report was also submitted to the executing court on 12-08-2002. In fact, the petitioner has also endorsed delivery of possession by issuing a receipt to the Bailiff/Amin.

The said delivery of possession by the Bailiff/Amin and the protection given by the police in executing the order of the executing court is not in dispute.

The unofficial respondents also filed counter affidavit on behalf of respondents 4 and 6 to 10 stating that the property claimed by them is not part and parcel of the suit schedule property or the E.P. schedule property and the decree holder is trying to take possession of their property apart from the said E.P. schedule property and, therefore, the 4th respondent field O.S.No.689 of 2005 on the file of Principal Senior Civil Judge, Visakhapatnam, for declaration of his title and for perpetual injunction against the petitioner and others. The said suit was decreed on 26-10-2005 declaring his right, title and interest over the said suit schedule property and the said decree has become final. Similarly, the wife of the 5th respondent filed O.S.No.860 of 2002 on the file of Principal Senior Civil Judge, Visakapatnam, and the same is pending. The 7th respondent also filed O.S.No.2403 of 2003 on the file of Junior Civil Judge, Visakhapatnam, and the same is pending. Further, the 10th respondent also filed O.S.No.1055 of 2002 on the file of Junior Civil Judge, Visakapatnam, which was decreed on 06-07-2005.

It is the case of the unofficial respondents that the property claimed by them is distinct and different from the schedule property in E.P.No.38 of 1968 in O.S.No.72 of 1959 on the file of IV Additional District Munsiff, Visakapatnam.

Having regard to the facts and circumstances of the case, I am not

inclined to express any opinion as to whether the property claimed by the unofficial respondents and the obstructions made by them are in respect of the said E.P. schedule property or different or distinct.

Insofar as the E.P. schedule property of the petitioner is concerned, the same has become final as it has been finally confirmed by this court. Further, certain objections claimed in respect of the said property was also resolved and the C.R.P. filed by the unofficial respondents was also dismissed. Therefore, the petitioner has got every right to enjoy the property in respect of which a decree has been passed and it has become final and attained finality. Though the decree has been executed for delivery of possession of the property, still if there is any obstruction or illegal interference either with regard to the demolition or construction or enjoyment of the said property in question, it is always open for the petitioner to enclose necessary documents relating to the E.P. schedule property for seeking necessary police protection before the concerned Station House Officer, in which case, it is the duty of the police officials to give necessary police protection to preserve the rightful ownership and enjoyment of the petitioner.

Having regard to the facts and circumstances of the case, as the application filed by the petitioner was only for enforcement of the order passed in E.A.No.1279 of 2002 in E.P.No.38 of 1968, dated 03-08-2002, and as the same was already enforced, I am of the opinion that no specific orders can be passed in this writ petition.

Accordingly, the writ petition is disposed of with a liberty to the petitioner to take appropriate action, as indicated above. There shall be no order as to costs.

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26-02-2007

Prv